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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,472	07/11/2003	Lijiang Yang	AA-603M	5309

27752 7590 03/03/2006

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CINCINNATI, OH 45224

EXAMINER

KRASS, FREDERICK F

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/618,472	<b>Applicant(s)</b> YANG ET AL.	
	<b>Examiner</b> Frederick F. Krass	<b>Art Unit</b> 1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Previous Rejections**

Unless specifically maintained infra, all prior rejections are withdrawn.

### **Indefiniteness Rejection**

#### Previous Rejection

Claims 1-9 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is maintained, but with regard to the following specific points only:

1) Claim 1, the term “about” 1.7% is viewed as indefinite since, as previously discussed, close prior art exists (see the “Anticipation” section infra) which casts doubt on the metes and bounds of the term, and nothing in the specification, prosecution history, or prior provides any indication as to how far below 1.7% one can go and still infringe the claim.

2) Claim 2, last line, the term “high purity” remains an indefinite, undefined “term of degree”.

Art Unit: 1614

New Rejection

Claim 5 is rejected under 35 U.S.C. 112, second paragraph as being indefinite.

Claim 5 is incomplete insofar as it depends from a now canceled claim.

**Anticipation Rejection**

Claims 1-9 were rejected under 35 U.S.C. 102(b) as being anticipated by USP 4,428,928.

This rejection is maintained.

Applicant takes the position that:

[T]he '928 reference does not teach or disclose oral care composition comprising from about 1.7% to about 20% by weight of the composition of a chelating agent. The working examples of '928 contain 0.96 percent or less of either citric acid or sodium dihydrate. Therefore, '928 does not anticipate the claims of the present invention. (Remarks, p. 4, ¶6).

The examiner does not agree.

The term "about" permits some tolerance. See, for example, In re Ayers, 69 USPQ 109 (CCPA 1946), where "at least about 10%" was held to be anticipated by a teaching of a content "not to exceed about 8%." In the instant case, the difference between the prior art value and that claimed is actually less than the 2 percent difference in Ayers. Accordingly, the instantly claimed value of "about" 1.7% is seen to anticipate the prior art value of 0.96.

### **Obviousness Rejection (New)**

Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muhler et al (USP 4,428,928) in view of Tikkanen (USP 5,032,388).

For the sake of completeness of prosecution, purely *arguendo*, and with regard to this particular ground of rejection only, the presumption will be made that the primary reference value of 0.96 is not anticipated by the instantly claimed value of "about" 1.7. Accordingly, by this interpretation, the primary reference differs from the instant claims insofar as it does not suggest, teach or disclose using about 1.7 to about 20 percent chelating agent. The prior art does, however, unambiguously state that its compositions are effective because, *inter alia*, they reduce tartar formation. See col. 1, lines 23-29, and also lines 40-43. The prior art's preferred pH ranges up to high values of 9 (col. 9, lines 35-37).

The secondary reference teaches that EDTA, when added to toothpastes (col. 4, lines 27-30) at a pH of between 5.5 and 9.0 and in amounts ranging from 5 to 7 percent by weight complexes calcium ions, thus preventing tartar formation. See col. 2, lines 3-6; lines 24-28; and lines 58-60. It differs from the instant claims insofar as it does not specifically exemplify talc-containing dentifrices.

It would have been obvious to have added 5-7 percent EDTA to the high pH toothpastes of the primary reference, motivated by the desire to further improve the

Art Unit: 1614

ability of those toothpastes to inhibit the formation of tartar per the teachings of the secondary reference.

### **Technological Background Material**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

An English language translation of French Patent 2,701,208, cited on the International Search Report, is provided herewith. The document is less pertinent than the art already applied since it fails to disclose various claimed particulars, including the instantly specified amounts of water and chelating agent, as well as the particular pH values.

An English language translation of German Patent No. 40 28 957 A1 is also provided. The reference discloses oral rinses containing EDTA.

### **Action is Final, Necessitated by Amendment**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1614

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick F. Krass whose telephone number is 571-272-0580. The examiner's schedule is 9:30AM – 6:00PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached at 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

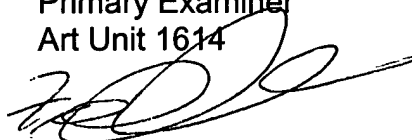
Application/Control Number: 10/618,472

Page 7

Art Unit: 1614

you have questions on access to the Private PAIR system, contact the Electronic  
Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to be 'F. Krass', written over the printed name and title.